

APPEAL NO. 040335
FILED APRIL 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 21, 2004. The hearing officer resolved the disputed issues by deciding that the decedent sustained a compensable injury on _____, that resulted in his death; that the appellant (carrier) did not waive its right to contest the claim; and that (wife), (minor daughter), (minor son), (minor daughter), and (minor son) are the proper legal beneficiaries of the decedent entitling them to death benefits. The carrier appeals the hearing officer's determination that the decedent sustained a compensable injury on _____, that resulted in his death, contending that the decedent was not in the course and scope of his employment at the time of the shooting that resulted in his injury and death, and that the shooting arose out of personal animosity. The respondents (claimants) assert that sufficient evidence supports the hearing officer's determination that the decedent sustained a compensable injury that resulted in his death. There is no appeal of the hearing officer's determinations on the waiver issue or on the issue of the proper legal beneficiaries.

DECISION

Affirmed.

The hearing officer found that the decedent, who worked as a security guard for the employer, was in the course and scope of his employment when he suffered a gunshot wound to his head while borrowing some security guard equipment from another security guard with the permission of his supervisor. The hearing officer was not persuaded that the decedent had deviated from his employment at the time he was injured nor was he persuaded that the shooting occurred as the result of personal animosity. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's finding that the decedent was in the course and scope of his employment when he was shot and the hearing officer's determination that the decedent sustained a compensable injury that resulted in his death are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge